1954.

File No. O. Rlys 14.

Legal **DEPARTMENT**

A BRANCH

Subject:—

Opinions under the

Indian Railways Act 1890.

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Section 11 (together with its provison) of the Indian Railways Act, 1890, has no application at all to the facts of the present case. This section relates to the obligation of the Railway to make and maintain certain works e.g. crossings, bridges, culverts etc. for the accommodation of the owners and occupiers of lands adjoining the Railway. These works are styled " accommodation works ". Now in the present case the widening of an existing Railway crossing cannot strictly be deemed an accommodation work specified in section 11 as it is not for the accommodation of the adjoining owners of lands but only for the convenience of the general public using the provincial road across which the Railway line passes.

2. Assuming for the sake of argument that the widening of the Railway crossing falls within the definition of accommodation work, even then it is clear from the specified wording of proviso (b) in section 11(3) that on the requisition of the Provincial Government the Railway Administration can be compelled to defray the cost of executing any further or additional accommodation work for the use of the owners of the adjoining lands after the expiration of 10 years from the date on which the Railway was first opened for public traffic.

3. Section 12 of the Act will also not apply to this case. This section provides Inter alia that if the Provincial Government desires to construct a public road or other work across a railway it may at any time require the Railway Administration to make at its expense (i.e. at the expense of the Provincial Government) such further accommodation works as it thinks necessary. As observed in G.I.P.Rly Co. vs. The Muncipal Corporation of Bombay , I.L.R. 23 Bom. 368 at p.367 section 12 is virtually a rider to section 11 and the term " accommodation works " obviously has reference to the accommodation works mentioned in section 11. The widening

of the existing level Crossing in the facts and circumstances of the present case cannot be considered to be an accommodation work and therefore section 12 will not apply.

4. That being so, we must fall back upon the contract between the Secretary of State and the Railway. Under clause 13 of that contract it is obligatory on the Railway Administration to construct and maintain to the satisfaction of the Government Inspector all such stations, crossing places, sidings, junctions and other works in addition to those specified in or indicated by this contract as the Secretary of States or the Government Inspector may from time to time consider to be expedient either for the efficient working of the Railway or for the convenience and the safety of the public and the traffic on the road way. The words "shall construct and maintain" in this clause imply that the construction and maintenance is to be at the cost of the Railway Administration unless specifically provided for either by the Act or by the terms of the contract. It appears that neither the Act nor the contract makes any provision for the cost of such work to be borne by the requisitioning authority, for, section 12 of the Act which provides for the expenses being borne by the requisitioning party or authority has, as stated above, no application to the present case. In fact reference to clauses 28 and 39 of the contract would go to show that the cost of such work is to be borne by the Railway Administration. There appears, therefore, to be no objection to the Provincial Government calling upon the Railway Administration to carry out at its own expense the alteration to the level crossing in question.

Sd/-
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16/4

U.R. to P.W. D.No. 3355 dated the 17th April 1941.

Office of the R.L.A.

The B.B. &C.I. Railway Agent admits that the construction of the I.W.D. bridge with its waterway would not obstruct the waterway of the Railway bridge in any way and the Agent has no reason, prima facie, to apprehend that the construction of the bridge will cause damage to the railway bridge or the approach banks. Should such damage occur at any time, the question whether it was due to the I.W.D. bridge would be a question of fact to be decided in an action for tort after the occurrence.

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Remembrancer of Legal Affairs.

Ad/-
14/6/41.

U.R. to I.W.D., No. 5406, dated the 17th June 1941.

D.E..